

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1086 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

KANTILAL P JETHVA

Appearance:

MR SM MAZGAONKER for Petitioner

MR HK RATHOD for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/03/98

ORAL JUDGMENT

Heard the learned counsel for the parties.

2. The petitioner, Gujarat State Road Transport Corporation (hereinafter referred to as 'Corporation'), by this Special Civil Application, challenges the award of the Labour Court, Rajkot, dated 19th November 1986, passed in Reference (LCR) No.2031 of 1984, under which the Corporation was ordered to reinstate the

respondent-workman to his original post with continuity of service but without backwages, within one month from the date of the award.

3. The facts of the case, in brief, are that the respondent-workman, a Conductor of the petitioner-Corporation was dismissed from services after holding the domestic enquiry on the alleged misconduct of not issuing tickets to the passengers. The Labour Court held that in the facts and circumstances which have come on record, it cannot be believed that the workman collected fare without issuing tickets to the passengers. Further finding has been given that the misconduct amounting to dishonesty and misappropriation is not proved. The only misconduct which was found proved against the respondent by the Labour Court was of not issuing tickets to the passengers till the bus covered distance of 20 kms. and that the respondent-workman should have completed booking, as it was the express bus, before the bus covers distance of 6 kms. The case of the respondent-workman that he was issuing tickets to the passengers when the bus was checked was also accepted and taking it to be a case of minor misconduct, penalty of dismissal was considered to be excessive and disproportionate. However, in lieu of penalty of dismissal, the respondent-workman has been denied the backwages.

4. This Court has not stayed the operation of the award and the learned counsel for the parties are in agreement that in pursuance of the award of the Labour Court, the respondent-workman has been reinstated in the service and is working in the Corporation. On the record of this Special Civil Application, from the side of the petitioner-Corporation, nothing has been produced to show that after reinstatement, the respondent-workman is not discharging his duties faithfully, honestly and diligently. However, I find some substance in the contention of the learned counsel for the petitioner-Corporation that denial of backwages is not substitution of penalty of dismissal when the misconduct, may be a minor misconduct, has been accepted to be committed by the respondent-workman. The learned counsel for the petitioner-Corporation further contended that the Labour Court should have awarded some penalty. After the misconduct was found proved and when it was taken to be a case of disproportionate punishment, though the Labour Court could have denied the backwages to the respondent-workman, in the present case, in fact, no penalty whatsoever has been imposed on the respondent-workman. Though I find some merits in this

contention of the learned counsel for the petitioner-Corporation, but I do not consider it to be appropriate case where this point has to be gone into. I find everyday the awards of this nature of the Labour Courts where though the penalty of dismissal is considered to be excessive or harsh or disproportionate to the misconduct found proved, the Labour Courts felt contended only by denying full backwages or some part thereof, in substitution of penalty of dismissal. In the appropriate case, this Court will consider this aspect, but on this ground, coupled with the fact that the respondent-workman is reinstated in service long back and after his reinstatement, the petitioner-Corporation has not come up with the case that he has committed any further misconduct, I do not consider it to be a fit case where interference has to be made in the present case. However, it is a matter to be considered by the Labour Court, where it accepts that the concerned workman has committed a misconduct, while considering the question of quantum of punishment, if the punishment given by the employer is considered to be excessive or disproportionate or harsh, that it has to be substituted by some punishment. Denial of backwages fully or partly may not be a penalty, much more a substitution of penalty, in place of penalty given by the disciplinary authority. Earlier, though in some of the cases of this nature, I have made observations that denial of backwages fully or partly may be substitution of penalty where the penalty given to the workman is considered to be excessive, but this observation may not be applicable in all cases and it needs reconsideration in appropriate case.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

6. The Registrar is directed to send a copy of this Judgment to all the Labour Courts and Tribunals in the State.

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(sunil)